



February 28, 2003

HOUSE BILL No. 1655

DIGEST OF HB 1655 (Updated February 27, 2003 10:03 AM - DI 108)

Citations Affected: IC 23-2; IC 24-4.6; IC 28-5; noncode.

Synopsis: Financial institutions. Restricts certain lending acts and practices. Establishes the mortgage fraud unit under the attorney general. Increases mortgage recording and loan broker registration and renewal fees. Requires the housing finance authority to provide mortgage literacy training programs. Allocates increased revenue to the housing finance authority, the mortgage fraud unit, and the securities division of the secretary of state. Allocates \$75,000 to the legislative council for a study of certain lending issues. Provides that the legislative council may establish a study committee to investigate certain lending issues. Makes technical corrections affecting industrial loan and investment companies.

Effective: Upon passage; July 1, 2003.

Bardon

January 21, 2003, read first time and referred to Committee on Financial Institutions.
February 27, 2003, amended, reported — Do Pass.

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HB 1655—LS 7174/DI 108+



February 28, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1655

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-2-5-3, AS AMENDED BY P.L.115-2001,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 3. (a) As used in this chapter, "certificate of
4 registration" means a certificate issued by the commissioner
5 authorizing an individual to engage in origination activities on behalf
6 of a licensee.

7 (b) As used in this chapter, "creditor" means a person:

8 (1) that loans funds of the person in connection with a loan; and

9 (2) to whom the loan is initially payable on the face of the note or
10 contract evidencing the loan.

11 (c) As used in this chapter, "license" means a license issued by the
12 commissioner authorizing a person to engage in the loan brokerage
13 business.

14 (d) As used in this chapter, "licensee" means a person that is issued
15 a license under this chapter.

16 (e) As used in this chapter, "loan broker" means any person who, in
17 return for any consideration from any person, promises to procure a

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loan for any person or assist any person in procuring a loan from any third party, or who promises to consider whether or not to make a loan to any person. "Loan broker" does not include:

(1) any bank, savings bank, trust company, savings association, credit union, or any other financial institution that is:

(A) regulated by any agency of the United States or any state; and

(B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;

(2) any person authorized to sell and service loans for **the Indiana housing finance authority**, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, issue securities backed by the Government National Mortgage Association, make loans insured by the United States Department of Housing and Urban Development, act as a supervised lender or nonsupervised automatic lender of the United States Department of Veterans Affairs, or act as a correspondent of loans insured by the United States Department of Housing and Urban Development;

(3) any insurance company; ~~or~~

(4) any person arranging financing for the sale of the person's product; ~~or~~

(5) any community development corporation (as defined in IC 4-4-28-2).

(f) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

(g) As used in this chapter, "origination activities" means establishing the terms or conditions of a loan with a borrower or prospective borrower.

(h) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

(i) As used in this chapter, "registrant" means an individual who is registered to engage in origination activities under this chapter.

(j) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls any ownership interest in a person, regardless of whether the person owns or controls the ownership interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

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SECTION 2. IC 23-2-5-5, AS AMENDED BY P.L.115-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) An application for license or renewal of a license must contain:

- (1) consent to service of process under subsection (e);
- (2) evidence of the bond required in subsection (b);
- (3) an application fee of ~~two~~ **three** hundred dollars ~~(\$200);~~ **(\$300);**
- (4) an affidavit affirming that none of the applicant's ultimate equitable owners, directors, managers, or officers have been convicted, in any jurisdiction, of an offense involving fraud or deception that is punishable by at least one (1) year of imprisonment, unless waived by the commissioner under subsection (f);
- (5) evidence that the applicant, if the applicant is an individual, has completed the education requirements under section 21 of this chapter;
- (6) a registration form setting forth the name, home address, home telephone number, and Social Security number of each employee or prospective employee of the applicant who is or who will be engaged in origination activities; and
- (7) evidence that the license applicant's proposed registrants have completed the education requirements of section 21 of this chapter.

(b) A licensee must maintain a bond satisfactory to the commissioner in the amount of ~~fifty~~ **one hundred** thousand dollars ~~(\$50,000);~~ **(\$100,000)**, which shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee.

(c) The commissioner shall issue a license to an applicant that meets the licensure requirements of this chapter. Whenever the registration provisions of this chapter have been complied with, the commissioner shall issue a certificate of registration authorizing the registrant to engage in origination activities.

(d) Licenses issued by the commissioner before January 1, 2001, shall be valid, and renewal of such licenses shall not be required until January 1, 2001. Individuals engaging in origination activities for a licensee before January 1, 2001, shall not be required to apply for and receive a certificate of registration until January 1, 2001. Except as otherwise provided in this subsection, licenses and certificates of registration issued by the commissioner are valid until January 1 of the second year after issuance. The education requirements of section 21

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of this chapter shall first apply to applicants for issuance or renewal of licenses or registrations effective as of January 1, 2001.

(e) Every applicant for licensure or for renewal of a license shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

(f) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

(g) Whenever an initial or renewal application for license is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.

SECTION 3. IC 23-2-5-19, AS AMENDED BY P.L.230-1999, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 19. (a) The following persons are exempt from the requirements of sections 4, 5, 6, 9, 10, 17, and 18 of this chapter:

(1) Any attorney while engaging in the practice of law.

(2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).

(3) Any person licensed as a real estate broker or salesperson under IC 25-34.1 to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.

(4) Any broker-dealer, agent, or investment advisor registered under IC 23-2-1.

(5) Any person that:

(A) procures;

(B) promises to procure; or

(C) assists in procuring;

a loan that is not subject to the Truth in Lending Act (15 U.S.C. 1601 through 1667e).

(6) Any community development corporation (as defined in IC 4-4-28-2).

(7) The Indiana housing finance authority.

(8) Any person who is a creditor, or proposed to be a creditor, for any loan.

(b) As used in this chapter, "bona fide third party fee" includes fees

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for the following:

(1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8.

(2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey, and similar purposes.

(3) The services provided by a loan broker in procuring possible business for a lending institution if the fees are paid by the lending institution.

(c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this chapter is on the party claiming the exemption or classification.

SECTION 4. IC 24-4.6-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 5. Indiana Fair Lending and Home Loan Protection Act

Sec. 1. As used in this chapter, "benchmark rate" means the interest rate established under Section 152 of the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1602 (aa)) and the regulations adopted under that act by the Federal Reserve Board, including 12 CFR 226.32, and the Official Staff Commentary to the regulations as each is amended.

Sec. 2. As used in this chapter, "bona fide discount points" means loan discount points that are:

(1) knowingly paid by the borrower;

(2) paid for the express purpose of lowering the benchmark rate;

(3) in fact reducing the interest rate or time-price differential applicable to the loan from an interest rate that does not exceed the benchmark rate; and

(4) recouped within the first four (4) years of the scheduled loan payments, if the reduction in the interest rate that is achieved by the payment of the loan discount points reduces the interest charged on the scheduled payments so that the borrower's dollar amount of savings in interest over the first four (4) years is equal to or greater than the dollar amount of loan discount points paid by the borrower.

Sec. 3. As used in this chapter, "borrower" means a person

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obligated to repay a home loan, including a coborrower, cosigner, or guarantor.

Sec. 4. (a) As used in this chapter, "creditor" means a person who:

(1) regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four (4) installments; and

(2) is a person to whom the debt arising from the home loan transaction is initially payable.

(b) The term also means:

(1) any person brokering a home loan, including any person who:

(A) directly or indirectly solicits, processes, places, or negotiates home loans for others;

(B) offers to solicit, process, place, or negotiate home loans for others; or

(C) closes home loans that may be in the person's own name with funds provided by others and that are thereafter assigned to the person providing funding for such loans.

(c) The term does not include:

(1) a servicer;

(2) any state or local housing finance authority;

(3) any other state or local governmental or quasi governmental entity; or

(4) an attorney providing legal services in association with the closing of a home loan.

Sec. 5. As used in this chapter, "high cost home loan" means a home loan whose interest rate or points and fees exceed the benchmark rate.

Sec. 6. As used in this chapter, "home loan" means a loan, other than a reverse mortgage transaction, where the loan is secured by a:

(1) mortgage or deed of trust on real estate in Indiana upon which there is located or there is to be located a structure or structures designed primarily for occupancy of one (1) to four (4) families and that is or will be occupied by a borrower as the borrower's principal dwelling; or

(2) security interest on a manufactured home that is or will be occupied by a borrower as the borrower's principal dwelling.

Sec. 7. (a) As used in this chapter, "manufactured home" means a structure transportable in one (1) or more sections:



(1) that:

**(A) is greater than or equal to eight (8) body feet in width;
or**

**(B) is greater than or equal to forty (40) body feet in
length;**

(2) built on a permanent chassis; and

(3) designed to be used as a dwelling:

**(A) with a permanent foundation when erected on land
secured in conjunction with the real property where the
manufactured home is located;**

(B) connected to the required utilities; and

**(C) containing the required plumbing, heating, air
conditioning, and electrical systems.**

(b) The term includes any structure:

**(1) that meets all requirements of subsection (a) except
subsection (a)(1)(A) or (a)(1)(B); and**

(2) with respect to which the manufacturer:

**(A) voluntarily files a certification required by the United
States Department of Housing and Urban Development;
and**

**(B) complies with the standards established under the
National Manufactured Housing Construction and Safety
Standards Act (42 U.S.C. 5401 et seq.).**

(c) The term does not include:

(1) rental property;

(2) second homes; or

**(3) manufactured homes when not secured in conjunction
with the real property on which the manufactured home is
located.**

**Sec. 8. As used in this chapter, "points and fees" means any of
the following:**

**(1) An amount payable under a point, discount, or other
system or additional charges.**

(2) A service or carrying charge.

(3) A loan fee, finder's fee, or similar charge.

(4) A fee for an investigation report.

**(5) Items exempted from computation of points and fees in
extensions of credit secured by an interest in real property.
However, the following items, when charged in connection
with any extension of credit secured by an interest in real
property, may not be included in the computation of the
finance charge with respect to that transaction, provided that**

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the creditor does not receive direct or indirect compensation in connection with the charge and the charge is not paid to an affiliate of the creditor:

(A) Fees or premiums for title examination, title insurance, or similar purposes.

(B) Fees for preparation of loan related documents.

(C) Escrows for future payments of taxes and insurance.

(D) Fees for notarizing deeds and other documents.

(E) Appraisal fees, including fees related to any pest infestation or flood hazard inspections conducted before closing.

(F) Credit reports.

(6) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table funded transaction.

(7) The cost of all premiums financed by the creditor, directly or indirectly, for:

(A) credit life;

(B) credit disability;

(C) credit unemployment;

(D) credit property insurance;

(E) other life or health insurance; or

(F) any payments financed by the creditor directly or indirectly for any debt cancellation or suspension agreement or contract. However, insurance premiums calculated and paid on a monthly basis are not considered financed by the creditor.

Sec. 9. As used in this chapter, "rate" means the interest rate charged on the home loan, based on an annual simple interest yield.

Sec. 10. As used in this chapter, "total loan amount" means:

(1) the principal of the loan minus the points and fees that are included in the principal amount of the loan; or

(2) the total line of credit allowed under the home loan for an open end loan.

Sec. 11. As used in this chapter, "trigger rate" means:

(1) for fixed rate loans in which the interest rate will not vary during the term of the loan, the rate as of the date of closing;

(2) for loans in which the interest varies according to an index, the sum of the index rate as of the date of loan closing plus the maximum margin permitted at any time under the loan agreement; or

(3) for all other loans in which the rate may vary at any time



during the term of the loan, the maximum rate that may be charged during the term of the loan.

Sec. 12. A creditor making a home loan may not finance, directly or indirectly, any:

- (1) credit life insurance;**
- (2) credit disability insurance;**
- (3) credit unemployment insurance;**
- (4) credit property insurance;**
- (5) other life or health insurance; or**
- (6) payments directly or indirectly for any cancellation suspension agreement or contract.**

However, insurance premiums, debt cancellation fees, or suspension fees calculated and paid on a monthly basis may not be considered financed by the creditor for purposes of this chapter.

Sec. 13. When within the first three (3) years of a high cost home loan a refinancing occurs, a current creditor of that high cost home loan may only charge points and fees on the amount that exceeds the principal and interest paid to close the original loan.

Sec. 14. A creditor may not recommend or encourage default on an existing loan or other debt before and in connection with the closing or planned closing of a home loan that refinances all or any part of the existing loan or debt.

Sec. 15. A creditor may not charge a late payment fee except according to the following rules:

- (1) The late payment fee may not exceed four percent (4%) of the amount of the payment past due.**
- (2) The late payment fee may be assessed only for a payment past due for at least fifteen (15) days.**
- (3) The late payment fee may not be charged more than one (1) time with respect to a single late payment. If a late payment charge is deducted from a payment made on the loan and the deduction causes a subsequent default on a subsequent payment, a late payment charge may not be imposed for the default. If a late payment charge has been imposed one (1) time with respect to a particular late payment, a late payment fee may not be imposed with respect to any future payment that would have been timely and sufficient, but for the previous default.**
- (4) A late payment fee may not be charged unless the creditor notifies the borrower within forty-five (45) days following the date the payment was due that a late payment charge has been imposed for a particular late payment. A late payment**



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charge may not be collected from any borrower if the borrower informs the creditor that nonpayment of an installment is in dispute and presents proof of payment within forty-five (45) days after receipt of the creditor's notice of the late charge.

(5) A creditor shall treat each payment as posted on the same date as it was received by the creditor, servicer, or creditor's agent, or at the address provided to the borrower by the creditor, servicer, or the creditor's agent for making payments.

Sec. 16. A home loan may not contain a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness. This section does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

Sec. 17. A creditor may not charge a fee for informing or transmitting to a person the balance due to pay off a home loan or to provide a release upon prepayment. A creditor must provide a payoff balance not later than seven (7) business days after the request is received by the creditor.

Sec. 18. (a) The following additional limitations and prohibited practices apply to a high cost home loan:

(1) Prepayment fees or penalties may not be included in the loan documents for a high cost home loan or charged to the borrower if the fees or penalties exceed in total two percent (2%) of the loan amount prepaid during the first twenty-four (24) months after the loan closing.

(2) A prepayment penalty may not be contracted for after the second year following the loan closing.

(3) A creditor may not include a prepayment penalty fee in a high cost home loan unless the creditor offers the borrower the option of choosing a loan product without a prepayment fee. The terms of this offer shall be made in writing and shall be initialed by the borrower. The document containing the offer must be clearly labeled in large bold type and must include the following disclosure:

"LOAN PRODUCT CHOICE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty."

(b) A high cost home loan may not contain a scheduled payment that is more than twice as large as the average of earlier scheduled

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1 payments, unless the payment schedule is adjusted to the seasonal
2 or irregular income of the borrower.

3 (c) A high cost home loan may not include payment terms under
4 which the outstanding principal balance will increase at any time
5 over the course of the loan because the regular periodic payments
6 do not cover the full amount of interest due.

7 (d) A high cost home loan may not contain a provision that
8 increases the interest rate after default. However, this subsection
9 does not apply to interest rate changes in a variable rate loan
10 otherwise consistent with the provisions of the loan documents if
11 the change in the interest rate is not triggered by the event of
12 default or the acceleration of the indebtedness.

13 (e) A high cost home loan may not include terms under which
14 more than two (2) periodic payments required under the loan are
15 consolidated and paid in advance from the loan proceeds provided
16 to the borrower.

17 (f) Without regard to whether a borrower is acting individually
18 or on behalf of others similarly situated, any provision of a home
19 loan agreement that:

20 (1) allows a party to require a borrower to assert any claim or
21 defense in a forum that is:

- 22 (A) less convenient;
- 23 (B) more costly; or
- 24 (C) more dilatory;

25 for the resolution of the dispute than a judicial forum
26 established in this state where the borrower may otherwise
27 bring a claim or defense; or

28 (2) limits in any way any claim or defense the borrower may
29 have;

30 is unconscionable and void.

31 (g) A creditor may not make a high cost home loan without first
32 providing the borrower information to facilitate contact with a
33 nonprofit counselor approved by the United States Department of
34 Housing and Urban Development or the Indiana housing finance
35 authority established by IC 5-20-1-3 and copies of all
36 documentation required from the creditor at the time of closing
37 under the Federal Truth In Lending Act. This information must be
38 delivered by certified mail at least seventy-two (72) hours before
39 the closing.

40 (h) A creditor may not make a high cost home loan without
41 regard to repayment ability. If a creditor presents evidence that
42 the creditor followed commercially reasonable practices in



determining the debt to income ratio, there is a rebuttable presumption that the creditor made the loan with due regard to repayment ability. The lender shall benefit from the rebuttable presumption that the borrower's statement of income is true and complete.

(i) A creditor may not pay a contractor under a home improvement contract from the proceeds of a high cost home loan unless:

(1) the creditor is presented with a signed and dated completion certificate showing that the home improvements have been completed; and

(2) the instrument is payable to the borrower or jointly to the borrower and the contractor or, at the election of the borrower, through a third party escrow agent under a written agreement signed by the borrower, the creditor, and the contractor before the disbursement.

(j) A creditor may not charge a borrower any fees or other charges to modify, renew, extend, or amend a high cost home loan or to defer any payment due under the terms of a high cost home loan.

(k) A creditor making a high cost home loan that has the right to foreclose must use the judicial foreclosure procedures of the state where the property securing the loan is located. The borrower has the right to assert in the proceeding the nonexistence of a default and any other claim or defense to acceleration and foreclosure, including any claim or defense based on any violations of this chapter, though no claim or defense is considered a compulsory counterclaim.

(l) A creditor may not engage in a practice or have a policy that encourages making a high cost home loan on the basis of race, ethnicity, gender, or age.

Sec. 19. If a creditor asserts that grounds for acceleration exist and requires the payment in full of all sums secured by the security instrument, the borrower or anyone authorized to act on the borrower's behalf at any time before the title is transferred by means of foreclosure, by judicial proceeding and sale, or otherwise, may cure the default and reinstate the home loan by tendering the amount or performance as specified in the security instrument. If the borrower cures the default, the borrower must be reinstated to the same position as if the default had not occurred, and any acceleration of any obligation under the security instrument or note arising from the default is nullified as of the date of the cure.



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1 **Sec. 20. (a)** Before an action is filed to foreclose upon the home
 2 or before other action is taken to seize or transfer ownership of the
 3 home, a notice of the right to cure the default in a home loan must
 4 be delivered to the borrower, informing the borrower of the
 5 following:

6 (1) The nature of default claimed on the home loan and the
 7 borrower's right to cure the default by paying the sum of
 8 money required to cure the default. However, a creditor or
 9 servicer may not refuse to accept any partial payment made
 10 or tendered in response to the notice. If the amount necessary
 11 to cure the default will change during the thirty (30) day
 12 period after the effective date of the notice due to the
 13 application of a daily interest rate or the addition of late fees
 14 as allowed by this chapter, the notice must give sufficient
 15 information to enable the borrower to calculate the amount at
 16 any point during the thirty (30) day period.

17 (2) The date by which the borrower must cure the default to
 18 avoid acceleration and initiation of foreclosure or other action
 19 to seize the home. The date may not be less than thirty (30)
 20 days after the date the notice is effective. The name, address,
 21 and telephone number of a person to whom the payment or
 22 tender must be made must also be disclosed.

23 (3) That if the borrower does not cure the default by the date
 24 specified, the creditor may take steps to terminate the
 25 borrower's ownership in the property by requiring payment
 26 in full of the home loan and commencing a foreclosure
 27 proceeding or other action to seize the home.

28 (4) The name and address of the creditor and the telephone
 29 number of a representative of the creditor whom the
 30 borrower may contact if the borrower disagrees with:

- 31 (A) the creditor's assertion that a default has occurred; or
 32 (B) the correctness of the creditor's calculation of the
 33 amount required to cure the default.

34 (b) To cure a default under this section, a borrower may not be
 35 required to pay a charge, fee, or penalty attributable to the
 36 exercise of the right to cure a default, as provided for in this
 37 section, other than the fees specifically allowed by this section. The
 38 borrower is not liable for:

- 39 (1) attorney's fees relating to the borrower's default that are
 40 incurred by the lender before or during the thirty (30) day
 41 period described in subsection (a)(2); or
 42 (2) a fee exceeding one hundred dollars (\$100) that is incurred

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by the lender after the expiration of the thirty (30) day period but before the lender files a foreclosure action or takes other action to seize or transfer ownership of the home.

After the lender files a foreclosure action or takes other action to seize or transfer ownership of the home, the borrower is liable only for attorney's fees that are reasonable and actually incurred by the lender, based on a reasonable hourly rate and a reasonable number of hours.

(c) If a default is cured before the initiation of an action to foreclose or to seize the residence, the creditor may not institute the foreclosure proceeding or other action for that default. If a default is cured after the initiation of any action to foreclose, the creditor shall take the steps necessary to terminate the foreclosure proceeding or other action. A creditor making a home loan who has the legal right to foreclose must use the judicial foreclosure procedures of the state where the property securing the loan is located. The borrower may assert in a judicial foreclosure proceeding or other action the nonexistence of a default and any other claim or defense to acceleration and foreclosure, including a claim or defense based on violations of this chapter. However, a claim or defense may not be considered a compulsory counterclaim.

Sec. 21. If the creditor or an assignee establishes by a preponderance of evidence that a violation of this chapter is unintentional or the result of a bona fide error of law or fact notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, the validity of the transaction is not affected, and no liability is imposed under section 22 except for the refusal to make a refund.

Sec. 22. (a) A person who knowingly or intentionally violates this article commits:

- (1) a Class A misdemeanor; and
- (2) a deceptive act that is actionable by the attorney general under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

(b) A person who violates this chapter is liable to the borrower for the following:

- (1) Actual damages, including consequential and incidental damages. The borrower is not required to demonstrate reliance in order to receive actual damages.
- (2) Statutory damages equal to the finance charges agreed to in the home loan agreement, plus ten percent (10%) of the

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amount financed.

(3) Punitive damages, if the violation was malicious or reckless.

(4) Costs and reasonable attorney's fees.

(c) A borrower may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

(d) The knowing or intentional violation of this chapter or a rule adopted under the authority of this chapter renders the home loan agreement void, and the creditor has no right to collect, receive, or retain any principal, interest, or other charges with respect to the loan. The borrower may recover any payments made under the agreement.

(e) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a consumer. A consumer is not required to exhaust any administrative remedies under this chapter or under any other applicable law.

(f) A creditor or assignee in a home loan who in good faith fails to comply with this chapter may not be considered to have violated this chapter if the creditor makes full restitution for the error within sixty (60) days from the discovery of the error.

(g) The brokering of a home loan:

(1) by a home loan broker as described in section 4(b) of this chapter; and

(2) that violates any provision of this chapter; constitutes a violation of that provision and of this chapter.

Sec. 23. The rights conferred by this chapter are in addition to rights granted under any other law.

Sec. 24. (a) The attorney general shall enforce this chapter for any violation occurring within five (5) years after the occurrence of the violations.

(b) As used in this chapter, "unit" refers to the mortgage fraud unit established by this section.

(c) The mortgage fraud unit is established in the office of the attorney general.

(d) The attorney general shall hire qualified individuals to implement the responsibilities of the unit, subject to the budget agency's approval.

(e) The unit shall do the following:

(1) Investigate allegations of fraud in connection with mortgage lending.

(2) Institute appropriate administrative and civil actions to

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1 redress fraud in connection with mortgage lending.

2 (3) Cooperate with federal, state, and local law enforcement
3 agencies in the investigation of fraud in connection with
4 mortgage lending.

5 (4) Cooperate with appropriate federal and state agencies in
6 the prosecution of criminal violations involving fraud in
7 connection with mortgage lending.

8 (f) The unit shall cooperate with the following to implement this
9 chapter:

10 (1) The Indiana professional licensing agency and the
11 appropriate licensing boards with respect to persons licensed
12 under IC 25.

13 (2) The department of financial institutions.

14 (3) The department of insurance with respect to the sale of
15 insurance in connection with mortgage lending.

16 (4) The securities division of the office of the secretary of
17 state.

18 (5) The supreme court disciplinary commission with respect
19 to attorney misconduct.

20 Sec. 25. The attorney general may file complaints with any of
21 the agencies listed in section 24(f) of this chapter to implement this
22 chapter.

23 Sec. 26. The establishment of the unit and its powers do not limit
24 the jurisdiction of any agency described in section 24(f) of this
25 chapter.

26 Sec. 27. (a) The attorney general and an investigator of the unit
27 may do any of the following when investigating alleged fraud in
28 connection with mortgage lending:

29 (1) Issue and serve a subpoena for the production of records,
30 including records stored in electronic data processing systems,
31 for inspection by the attorney general or the investigator.

32 (2) Issue and serve a subpoena for the appearance of any
33 person before the department to provide testimony under
34 oath.

35 (3) Apply to a court with jurisdiction to enforce a subpoena
36 described in subdivision (1) or (2).

37 (b) The attorney general shall make recommendations to the
38 general assembly for appropriate legislation to address fraud in
39 connection with mortgage lending.

40 (c) The unit shall maintain an education program to inform
41 consumers of mortgage loans of fraud in connection with mortgage
42 lending. The unit shall cooperate with the agencies listed in section



24(f) of this chapter to develop and implement the education program required by this subsection.

Sec. 28. (a) The fees assessed by the county recorder to record a mortgage is increased by three dollars (\$3) per mortgage filing. The county recorder shall retain fifty cents (\$0.50) of the fee increase. One dollar and fifty cents (\$1.50) shall be credited to the Indiana housing finance authority established under IC 5-20-1-3 to identify, promote, and fund mortgage literacy training and programs throughout the state. One dollar (\$1) from the fee increase is credited to the mortgage fraud unit.

(b) An allocation of seventy-five thousand dollars (\$75,000) consisting of the increased fees under this chapter shall be made to the legislative council before any fee revenue shall be allocated to the mortgage fraud unit of the attorney general's office or the Indiana housing finance authority. The seventy-five thousand dollar (\$75,000) allocation shall be used to contract an independent organization to conduct a study of predatory lending and the causes of the high rate of foreclosure in Indiana during 2001 and 2002.

(c) The results of the study shall be reported in writing to the legislative council not later than December 31, 2004. The report is a public record. This subsection expires January 1, 2005.

(d) The legislative council may establish an interim study committee to investigate predatory lending and the high rate of foreclosure in Indiana.

Sec. 29. The fee assessed under IC 23-2-5 by the for the registration of loan brokers and originators is increased by one hundred dollars (\$100) for renewal of a registration and by one hundred dollars (\$100) for an initial registration and is credited to the loan broker regulation account established by IC 23-2-5-7.

Sec. 30. A servicer of a covered loan shall report at least monthly both the favorable and unfavorable payment history information of the borrower on payments due to the lender on a covered loan to a nationally recognized consumer credit reporting agency. This subsection does not prevent a servicer from agreeing with the borrower not to report specified payment history information in the event of a resolved or unresolved dispute with an borrower and does not apply to covered loans held or serviced by a lender for less than ninety (90) days.

SECTION 5. IC 28-5-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) An industrial loan and investment company, hereinafter in this section sometimes called

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"company" may, subject to the requirements of this section, make or acquire a loan secured by a first lien upon real estate (including a leasehold) located in any state or the District of Columbia in an amount and for terms not to exceed:

(a) (1) in the case of improved real estate, including farmland:

(i) (A) three-fourths ($3/4$) of the appraised value if the terms of the loan require substantially equal payments at successive intervals of not more than one (1) year each and if the terms of the loan are such as would require the payment of forty percent (40%) of the principal of and all interest on the loan within a period of ten (10) years; or

(ii) (B) nine-tenths ($9/10$) of the appraised value if the terms of the loan require substantially equal payments at successive intervals of not more than one (1) year each and if the terms of the loan are such as would require the payment of all principal and interest on the loan within a period of thirty (30) years, except that the date of the initial payment of principal on a loan to a business borrower may be deferred for a period of not to exceed three (3) years from the date of the loan; or

(b) (2) in the case of unimproved real estate, one-half ($1/2$) the appraised value for a term not to exceed five (5) years or two-thirds ($2/3$) of the appraised value for a term not to exceed five (5) years if utilities, roads, or streets necessary for the development of such real estate have been completed. If the money borrowed on real estate is to be used for erecting improvements, and if the money is to be advanced as the work progresses, in such event, the appraised value for purposes of the loan shall be based upon the condition of the real estate when such improvements shall have been completed.

(b) The department may by rule or regulation increase or decrease the fraction of the appraised value which may be loaned with real estate as security and may increase or decrease the terms for which such loans may be made if the department finds that it is in the interest of the economy of the state and in conformity with sound financial practice.

(c) In a case in which a loan subject to this section is made to finance construction of an improvement and such loan is combined with a permanent loan to continue after completion of construction, the term of the construction loan or that portion of the term not in excess of three (3) years, shall not be counted against the maximum term for the permanent loan permitted under this section but such combined construction loan and permanent loan shall be subject to all other requirements of this section.



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(d) For the purpose of this section, a "leasehold" ~~shall mean~~ means the interest, which is security for a loan, of a lessee of real estate under a lease which on the date of the loan has an unexpired term extending at least five (5) years beyond the maturity of the loan, or contains a right of renewal, which may be exercised by the mortgagee, extending at least five (5) years beyond the maturity of the loan. The requirements for a loan subject to this section shall be: (i) the loan shall be evidenced by a bond, note, or other obligation and the lien securing such loan shall be obtained by a mortgage, deed of trust, or judgment; (ii) the lien shall be a first lien (except for a lien of taxes, assessments, or charges which are not yet due or which are payable without penalty) unless all prior liens are held by the company and the aggregate of all loans by the company secured by liens on the real estate satisfy all other requirements of this section pertaining to such loans; (iii) insurance against loss from fire on all buildings on the real estate which are included in the appraised value, issued by insurers acceptable to the company and authorized to do business where the real estate is located and in form and amount satisfactory to the company, shall be maintained during the term of the loan by or at the expense of the borrower, except that the company may at its own expense maintain such insurance covering only its interest as lender; and (iv) the borrower shall pay all expenses in connection with the loan for title insurance, searches and certificates, appraisal fees and fees for preparation and recording of documents.

(e) The appraised value of the real estate offered for security shall be determined by one (1) or more competent persons who shall report such valuation in writing to such company. The written report so made shall be signed and in the event that such company makes such a loan, shall be kept on file by it subject to inspection by the department.

(f) The foregoing limitations and restrictions shall not apply to real estate loans which are (1) mentioned in sections 6(a)(10), (11), and (12) of this chapter and the regulations issued thereunder insofar as said sections and regulations apply to loans on the security of real estate; and (2) made under 38 U.S.C. 1801 through 1825 and the regulations issued under that federal law, insofar as said federal law and regulations apply to loans on the security of real estate, and under such limitations and restrictions as the department may, by regulation, prescribe.

(g) The limitations set forth in this section shall not apply to mortgages taken as additional security for loans otherwise authorized by this chapter or as security for any loans which are in default or to second mortgages. Loans made to businesses where the company looks

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for repayment out of the operations of the borrower's business, relying primarily on the borrower's general credit standing and forecast of operations, with or without other security, but wishes to take a mortgage on the borrower's real estate as a precaution against contingencies, shall not be considered as real estate loans within the meaning of this section and, therefore, shall not be subject to the limitations of this section.

(h) Any loan made upon the security of real estate which exceeds the maximum fraction of the appraised value of such real estate will not be in violation of this section so long as that portion of the loan in excess of the maximum fraction of the appraised value of the real estate is fully guaranteed or is fully secured by collateral consisting of a savings deposit, certificate of deposit, certificates of indebtedness or investment, assignment of rent, life insurance, or other collateral security to which the company has ready access and a first claim.

(i) Subject to the limitations and restrictions of this section, any industrial loan and investment company, in addition to being permitted to make loans as provided by this section, may purchase, acquire, hold, and dispose of any loan, made to any other person, firm, limited liability company, or corporation and the notes and mortgages securing such loan. Before any such loan shall be purchased by any industrial loan and investment company the real estate securing such loan shall be appraised in the manner provided by this section for appraisal of the real estate offered as security for a loan to be made by such industrial loan and investment company.

(j) Subject to the limitations of this section relating to the fraction of the appraised value which may be loaned on real estate as security, a company may make variable rate mortgage loans and rollover mortgage loans subject to the same limitations and rights provided state chartered banks and federally chartered banks. ~~under IC 28-1-13.5.~~

SECTION 6. [EFFECTIVE UPON PASSAGE] **This act does not affect:**

- (1) rights or liabilities accrued;**
- (2) penalties incurred;**
- (3) crimes committed; or**
- (4) proceedings begun;**

before the effective date of this act. Those rights, liabilities, penalties, crimes, and proceedings continue and shall be imposed and enforced under prior law as if this act had not been enacted.

SECTION 7. [EFFECTIVE UPON PASSAGE] **The provisions of this act are severable in the manner provided by IC 1-1-1-8(b).**

SECTION 8. **An emergency is declared for this act.**



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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1655, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 23-2-5-3, AS AMENDED BY P.L.115-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) As used in this chapter, "certificate of registration" means a certificate issued by the commissioner authorizing an individual to engage in origination activities on behalf of a licensee.

(b) As used in this chapter, "creditor" means a person:

- (1) that loans funds of the person in connection with a loan; and
- (2) to whom the loan is initially payable on the face of the note or contract evidencing the loan.

(c) As used in this chapter, "license" means a license issued by the commissioner authorizing a person to engage in the loan brokerage business.

(d) As used in this chapter, "licensee" means a person that is issued a license under this chapter.

(e) As used in this chapter, "loan broker" means any person who, in return for any consideration from any person, promises to procure a loan for any person or assist any person in procuring a loan from any third party, or who promises to consider whether or not to make a loan to any person. "Loan broker" does not include:

(1) any bank, savings bank, trust company, savings association, credit union, or any other financial institution that is:

(A) regulated by any agency of the United States or any state; and

(B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;

(2) any person authorized to sell and service loans for **the Indiana housing finance authority**, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, issue securities backed by the Government National Mortgage Association, make loans insured by the United States Department of Housing and Urban Development, act as a supervised lender or nonsupervised automatic lender of the

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United States Department of Veterans Affairs, or act as a correspondent of loans insured by the United States Department of Housing and Urban Development;

(3) any insurance company; ~~or~~

(4) any person arranging financing for the sale of the person's product; ~~or~~

(5) any community development corporation (as defined in IC 4-4-28-2).

(f) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

(g) As used in this chapter, "origination activities" means establishing the terms or conditions of a loan with a borrower or prospective borrower.

(h) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

(i) As used in this chapter, "registrant" means an individual who is registered to engage in origination activities under this chapter.

(j) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls any ownership interest in a person, regardless of whether the person owns or controls the ownership interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

SECTION 2. IC 23-2-5-5, AS AMENDED BY P.L.115-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) An application for license or renewal of a license must contain:

(1) consent to service of process under subsection (e);

(2) evidence of the bond required in subsection (b);

(3) an application fee of ~~two~~ **three** hundred dollars ~~(\$200);~~ **(\$300);**

(4) an affidavit affirming that none of the applicant's ultimate equitable owners, directors, managers, or officers have been convicted, in any jurisdiction, of an offense involving fraud or deception that is punishable by at least one (1) year of imprisonment, unless waived by the commissioner under subsection (f);

(5) evidence that the applicant, if the applicant is an individual, has completed the education requirements under section 21 of this chapter;

(6) a registration form setting forth the name, home address, home

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telephone number, and Social Security number of each employee or prospective employee of the applicant who is or who will be engaged in origination activities; and

(7) evidence that the license applicant's proposed registrants have completed the education requirements of section 21 of this chapter.

(b) A licensee must maintain a bond satisfactory to the commissioner in the amount of ~~forty~~ **one hundred** thousand dollars (~~\$50,000~~), (**\$100,000**), which shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee.

(c) The commissioner shall issue a license to an applicant that meets the licensure requirements of this chapter. Whenever the registration provisions of this chapter have been complied with, the commissioner shall issue a certificate of registration authorizing the registrant to engage in origination activities.

(d) Licenses issued by the commissioner before January 1, 2001, shall be valid, and renewal of such licenses shall not be required until January 1, 2001. Individuals engaging in origination activities for a licensee before January 1, 2001, shall not be required to apply for and receive a certificate of registration until January 1, 2001. Except as otherwise provided in this subsection, licenses and certificates of registration issued by the commissioner are valid until January 1 of the second year after issuance. The education requirements of section 21 of this chapter shall first apply to applicants for issuance or renewal of licenses or registrations effective as of January 1, 2001.

(e) Every applicant for licensure or for renewal of a license shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

(f) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

(g) Whenever an initial or renewal application for license is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.

SECTION 3. IC 23-2-5-19, AS AMENDED BY P.L.230-1999, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 19. (a) The following persons are exempt from the



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requirements of sections 4, 5, 6, 9, 10, 17, and 18 of this chapter:

- (1) Any attorney while engaging in the practice of law.
- (2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).
- (3) Any person licensed as a real estate broker or salesperson under IC 25-34.1 to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.
- (4) Any broker-dealer, agent, or investment advisor registered under IC 23-2-1.
- (5) Any person that:
 - (A) procures;
 - (B) promises to procure; or
 - (C) assists in procuring;
 a loan that is not subject to the Truth in Lending Act (15 U.S.C. 1601 through 1667e).
- (6) **Any community development corporation (as defined in IC 4-4-28-2).**
- (7) **The Indiana housing finance authority.**
- (8) Any person who is a creditor, or proposed to be a creditor, for any loan.

(b) As used in this chapter, "bona fide third party fee" includes fees for the following:

- (1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8.
- (2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey, and similar purposes.
- (3) The services provided by a loan broker in procuring possible business for a lending institution if the fees are paid by the lending institution.

(c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this chapter is on the party claiming the exemption or classification.

SECTION 4. IC 24-4.6-5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

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Chapter 5. Indiana Fair Lending and Home Loan Protection Act

Sec. 1. As used in this chapter, "benchmark rate" means the interest rate established under Section 152 of the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1602 (aa)) and the regulations adopted under that act by the Federal Reserve Board, including 12 CFR 226.32, and the Official Staff Commentary to the regulations as each is amended.

Sec. 2. As used in this chapter, "bona fide discount points" means loan discount points that are:

- (1) knowingly paid by the borrower;
- (2) paid for the express purpose of lowering the benchmark rate;
- (3) in fact reducing the interest rate or time-price differential applicable to the loan from an interest rate that does not exceed the benchmark rate; and
- (4) recouped within the first four (4) years of the scheduled loan payments, if the reduction in the interest rate that is achieved by the payment of the loan discount points reduces the interest charged on the scheduled payments so that the borrower's dollar amount of savings in interest over the first four (4) years is equal to or greater than the dollar amount of loan discount points paid by the borrower.

Sec. 3. As used in this chapter, "borrower" means a person obligated to repay a home loan, including a coborrower, cosigner, or guarantor.

Sec. 4. (a) As used in this chapter, "creditor" means a person who:

- (1) regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four (4) installments; and
- (2) is a person to whom the debt arising from the home loan transaction is initially payable.

(b) The term also means:

- (1) any person brokering a home loan, including any person who:
 - (A) directly or indirectly solicits, processes, places, or negotiates home loans for others;
 - (B) offers to solicit, process, place, or negotiate home loans for others; or
 - (C) closes home loans that may be in the person's own name with funds provided by others and that are



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thereafter assigned to the person providing funding for such loans.

(c) The term does not include:

- (1) a servicer;
- (2) any state or local housing finance authority;
- (3) any other state or local governmental or quasi governmental entity; or
- (4) an attorney providing legal services in association with the closing of a home loan.

Sec. 5. As used in this chapter, "high cost home loan" means a home loan whose interest rate or points and fees exceed the benchmark rate.

Sec. 6. As used in this chapter, "home loan" means a loan, other than a reverse mortgage transaction, where the loan is secured by a:

- (1) mortgage or deed of trust on real estate in Indiana upon which there is located or there is to be located a structure or structures designed primarily for occupancy of one (1) to four (4) families and that is or will be occupied by a borrower as the borrower's principal dwelling; or
- (2) security interest on a manufactured home that is or will be occupied by a borrower as the borrower's principal dwelling.

Sec. 7. (a) As used in this chapter, "manufactured home" means a structure transportable in one (1) or more sections:

- (1) that:
 - (A) is greater than or equal to eight (8) body feet in width; or
 - (B) is greater than or equal to forty (40) body feet in length;
- (2) built on a permanent chassis; and
- (3) designed to be used as a dwelling:
 - (A) with a permanent foundation when erected on land secured in conjunction with the real property where the manufactured home is located;
 - (B) connected to the required utilities; and
 - (C) containing the required plumbing, heating, air conditioning, and electrical systems.

(b) The term includes any structure:

- (1) that meets all requirements of subsection (a) except subsection (a)(1)(A) or (a)(1)(B); and
- (2) with respect to which the manufacturer:
 - (A) voluntarily files a certification required by the United



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States Department of Housing and Urban Development;
and

(B) complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act (42 U.S.C. 5401 et seq.).

(c) The term does not include:

- (1) rental property;
- (2) second homes; or
- (3) manufactured homes when not secured in conjunction with the real property on which the manufactured home is located.

Sec. 8. As used in this chapter, "points and fees" means any of the following:

- (1) An amount payable under a point, discount, or other system or additional charges.
- (2) A service or carrying charge.
- (3) A loan fee, finder's fee, or similar charge.
- (4) A fee for an investigation report.
- (5) Items exempted from computation of points and fees in extensions of credit secured by an interest in real property. However, the following items, when charged in connection with any extension of credit secured by an interest in real property, may not be included in the computation of the finance charge with respect to that transaction, provided that the creditor does not receive direct or indirect compensation in connection with the charge and the charge is not paid to an affiliate of the creditor:
 - (A) Fees or premiums for title examination, title insurance, or similar purposes.
 - (B) Fees for preparation of loan related documents.
 - (C) Escrows for future payments of taxes and insurance.
 - (D) Fees for notarizing deeds and other documents.
 - (E) Appraisal fees, including fees related to any pest infestation or flood hazard inspections conducted before closing.
 - (F) Credit reports.
- (6) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table funded transaction.
- (7) The cost of all premiums financed by the creditor, directly or indirectly, for:
 - (A) credit life;



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- (B) credit disability;
- (C) credit unemployment;
- (D) credit property insurance;
- (E) other life or health insurance; or
- (F) any payments financed by the creditor directly or indirectly for any debt cancellation or suspension agreement or contract. However, insurance premiums calculated and paid on a monthly basis are not considered financed by the creditor.

Sec. 9. As used in this chapter, "rate" means the interest rate charged on the home loan, based on an annual simple interest yield.

Sec. 10. As used in this chapter, "total loan amount" means:

- (1) the principal of the loan minus the points and fees that are included in the principal amount of the loan; or
- (2) the total line of credit allowed under the home loan for an open end loan.

Sec. 11. As used in this chapter, "trigger rate" means:

- (1) for fixed rate loans in which the interest rate will not vary during the term of the loan, the rate as of the date of closing;
- (2) for loans in which the interest varies according to an index, the sum of the index rate as of the date of loan closing plus the maximum margin permitted at any time under the loan agreement; or
- (3) for all other loans in which the rate may vary at any time during the term of the loan, the maximum rate that may be charged during the term of the loan.

Sec. 12. A creditor making a home loan may not finance, directly or indirectly, any:

- (1) credit life insurance;
- (2) credit disability insurance;
- (3) credit unemployment insurance;
- (4) credit property insurance;
- (5) other life or health insurance; or
- (6) payments directly or indirectly for any cancellation suspension agreement or contract.

However, insurance premiums, debt cancellation fees, or suspension fees calculated and paid on a monthly basis may not be considered financed by the creditor for purposes of this chapter.

Sec. 13. When within the first three (3) years of a high cost home loan a refinancing occurs, a current creditor of that high cost home loan may only charge points and fees on the amount that exceeds the principal and interest paid to close the original loan.



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Sec. 14. A creditor may not recommend or encourage default on an existing loan or other debt before and in connection with the closing or planned closing of a home loan that refinances all or any part of the existing loan or debt.

Sec. 15. A creditor may not charge a late payment fee except according to the following rules:

- (1) The late payment fee may not exceed four percent (4%) of the amount of the payment past due.
- (2) The late payment fee may be assessed only for a payment past due for at least fifteen (15) days.
- (3) The late payment fee may not be charged more than one (1) time with respect to a single late payment. If a late payment charge is deducted from a payment made on the loan and the deduction causes a subsequent default on a subsequent payment, a late payment charge may not be imposed for the default. If a late payment charge has been imposed one (1) time with respect to a particular late payment, a late payment fee may not be imposed with respect to any future payment that would have been timely and sufficient, but for the previous default.
- (4) A late payment fee may not be charged unless the creditor notifies the borrower within forty-five (45) days following the date the payment was due that a late payment charge has been imposed for a particular late payment. A late payment charge may not be collected from any borrower if the borrower informs the creditor that nonpayment of an installment is in dispute and presents proof of payment within forty-five (45) days after receipt of the creditor's notice of the late charge.
- (5) A creditor shall treat each payment as posted on the same date as it was received by the creditor, servicer, or creditor's agent, or at the address provided to the borrower by the creditor, servicer, or the creditor's agent for making payments.

Sec. 16. A home loan may not contain a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness. This section does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

Sec. 17. A creditor may not charge a fee for informing or transmitting to a person the balance due to pay off a home loan or to provide a release upon prepayment. A creditor must provide a

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payoff balance not later than seven (7) business days after the request is received by the creditor.

Sec. 18. (a) The following additional limitations and prohibited practices apply to a high cost home loan:

(1) Prepayment fees or penalties may not be included in the loan documents for a high cost home loan or charged to the borrower if the fees or penalties exceed in total two percent (2%) of the loan amount prepaid during the first twenty-four (24) months after the loan closing.

(2) A prepayment penalty may not be contracted for after the second year following the loan closing.

(3) A creditor may not include a prepayment penalty fee in a high cost home loan unless the creditor offers the borrower the option of choosing a loan product without a prepayment fee. The terms of this offer shall be made in writing and shall be initialed by the borrower. The document containing the offer must be clearly labeled in large bold type and must include the following disclosure:

"LOAN PRODUCT CHOICE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty."

(b) A high cost home loan may not contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments, unless the payment schedule is adjusted to the seasonal or irregular income of the borrower.

(c) A high cost home loan may not include payment terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.

(d) A high cost home loan may not contain a provision that increases the interest rate after default. However, this subsection does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents if the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

(e) A high cost home loan may not include terms under which more than two (2) periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(f) Without regard to whether a borrower is acting individually or on behalf of others similarly situated, any provision of a home

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loan agreement that:

(1) allows a party to require a borrower to assert any claim or defense in a forum that is:

- (A) less convenient;
- (B) more costly; or
- (C) more dilatory;

for the resolution of the dispute than a judicial forum established in this state where the borrower may otherwise bring a claim or defense; or

(2) limits in any way any claim or defense the borrower may have;

is unconscionable and void.

(g) A creditor may not make a high cost home loan without first providing the borrower information to facilitate contact with a nonprofit counselor approved by the United States Department of Housing and Urban Development or the Indiana housing finance authority established by IC 5-20-1-3 and copies of all documentation required from the creditor at the time of closing under the Federal Truth In Lending Act. This information must be delivered by certified mail at least seventy-two (72) hours before the closing.

(h) A creditor may not make a high cost home loan without regard to repayment ability. If a creditor presents evidence that the creditor followed commercially reasonable practices in determining the debt to income ratio, there is a rebuttable presumption that the creditor made the loan with due regard to repayment ability. The lender shall benefit from the rebuttable presumption that the borrower's statement of income is true and complete.

(i) A creditor may not pay a contractor under a home improvement contract from the proceeds of a high cost home loan unless:

- (1) the creditor is presented with a signed and dated completion certificate showing that the home improvements have been completed; and
- (2) the instrument is payable to the borrower or jointly to the borrower and the contractor or, at the election of the borrower, through a third party escrow agent under a written agreement signed by the borrower, the creditor, and the contractor before the disbursement.

(j) A creditor may not charge a borrower any fees or other charges to modify, renew, extend, or amend a high cost home loan

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or to defer any payment due under the terms of a high cost home loan.

(k) A creditor making a high cost home loan that has the right to foreclose must use the judicial foreclosure procedures of the state where the property securing the loan is located. The borrower has the right to assert in the proceeding the nonexistence of a default and any other claim or defense to acceleration and foreclosure, including any claim or defense based on any violations of this chapter, though no claim or defense is considered a compulsory counterclaim.

(l) A creditor may not engage in a practice or have a policy that encourages making a high cost home loan on the basis of race, ethnicity, gender, or age.

Sec. 19. If a creditor asserts that grounds for acceleration exist and requires the payment in full of all sums secured by the security instrument, the borrower or anyone authorized to act on the borrower's behalf at any time before the title is transferred by means of foreclosure, by judicial proceeding and sale, or otherwise, may cure the default and reinstate the home loan by tendering the amount or performance as specified in the security instrument. If the borrower cures the default, the borrower must be reinstated to the same position as if the default had not occurred, and any acceleration of any obligation under the security instrument or note arising from the default is nullified as of the date of the cure.

Sec. 20. (a) Before an action is filed to foreclose upon the home or before other action is taken to seize or transfer ownership of the home, a notice of the right to cure the default in a home loan must be delivered to the borrower, informing the borrower of the following:

- (1) The nature of default claimed on the home loan and the borrower's right to cure the default by paying the sum of money required to cure the default. However, a creditor or servicer may not refuse to accept any partial payment made or tendered in response to the notice. If the amount necessary to cure the default will change during the thirty (30) day period after the effective date of the notice due to the application of a daily interest rate or the addition of late fees as allowed by this chapter, the notice must give sufficient information to enable the borrower to calculate the amount at any point during the thirty (30) day period.
- (2) The date by which the borrower must cure the default to avoid acceleration and initiation of foreclosure or other action



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to seize the home. The date may not be less than thirty (30) days after the date the notice is effective. The name, address, and telephone number of a person to whom the payment or tender must be made must also be disclosed.

(3) That if the borrower does not cure the default by the date specified, the creditor may take steps to terminate the borrower's ownership in the property by requiring payment in full of the home loan and commencing a foreclosure proceeding or other action to seize the home.

(4) The name and address of the creditor and the telephone number of a representative of the creditor whom the borrower may contact if the borrower disagrees with:

- (A) the creditor's assertion that a default has occurred; or
- (B) the correctness of the creditor's calculation of the amount required to cure the default.

(b) To cure a default under this section, a borrower may not be required to pay a charge, fee, or penalty attributable to the exercise of the right to cure a default, as provided for in this section, other than the fees specifically allowed by this section. The borrower is not liable for:

- (1) attorney's fees relating to the borrower's default that are incurred by the lender before or during the thirty (30) day period described in subsection (a)(2); or
- (2) a fee exceeding one hundred dollars (\$100) that is incurred by the lender after the expiration of the thirty (30) day period but before the lender files a foreclosure action or takes other action to seize or transfer ownership of the home.

After the lender files a foreclosure action or takes other action to seize or transfer ownership of the home, the borrower is liable only for attorney's fees that are reasonable and actually incurred by the lender, based on a reasonable hourly rate and a reasonable number of hours.

(c) If a default is cured before the initiation of an action to foreclose or to seize the residence, the creditor may not institute the foreclosure proceeding or other action for that default. If a default is cured after the initiation of any action to foreclose, the creditor shall take the steps necessary to terminate the foreclosure proceeding or other action. A creditor making a home loan who has the legal right to foreclose must use the judicial foreclosure procedures of the state where the property securing the loan is located. The borrower may assert in a judicial foreclosure proceeding or other action the nonexistence of a default and any



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other claim or defense to acceleration and foreclosure, including a claim or defense based on violations of this chapter. However, a claim or defense may not be considered a compulsory counterclaim.

Sec. 21. If the creditor or an assignee establishes by a preponderance of evidence that a violation of this chapter is unintentional or the result of a bona fide error of law or fact notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, the validity of the transaction is not affected, and no liability is imposed under section 22 except for the refusal to make a refund.

Sec. 22. (a) A person who knowingly or intentionally violates this article commits:

- (1) a Class A misdemeanor; and
- (2) a deceptive act that is actionable by the attorney general under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

(b) A person who violates this chapter is liable to the borrower for the following:

- (1) Actual damages, including consequential and incidental damages. The borrower is not required to demonstrate reliance in order to receive actual damages.
- (2) Statutory damages equal to the finance charges agreed to in the home loan agreement, plus ten percent (10%) of the amount financed.
- (3) Punitive damages, if the violation was malicious or reckless.
- (4) Costs and reasonable attorney's fees.

(c) A borrower may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

(d) The knowing or intentional violation of this chapter or a rule adopted under the authority of this chapter renders the home loan agreement void, and the creditor has no right to collect, receive, or retain any principal, interest, or other charges with respect to the loan. The borrower may recover any payments made under the agreement.

(e) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a consumer. A consumer is not required to exhaust any administrative remedies under this chapter or under any other applicable law.

(f) A creditor or assignee in a home loan who in good faith fails



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to comply with this chapter may not be considered to have violated this chapter if the creditor makes full restitution for the error within sixty (60) days from the discovery of the error.

(g) The brokering of a home loan:

(1) by a home loan broker as described in section 4(b) of this chapter; and

(2) that violates any provision of this chapter;

constitutes a violation of that provision and of this chapter.

Sec. 23. The rights conferred by this chapter are in addition to rights granted under any other law.

Sec. 24. (a) The attorney general shall enforce this chapter for any violation occurring within five (5) years after the occurrence of the violations.

(b) As used in this chapter, "unit" refers to the mortgage fraud unit established by this section.

(c) The mortgage fraud unit is established in the office of the attorney general.

(d) The attorney general shall hire qualified individuals to implement the responsibilities of the unit, subject to the budget agency's approval.

(e) The unit shall do the following:

(1) Investigate allegations of fraud in connection with mortgage lending.

(2) Institute appropriate administrative and civil actions to redress fraud in connection with mortgage lending.

(3) Cooperate with federal, state, and local law enforcement agencies in the investigation of fraud in connection with mortgage lending.

(4) Cooperate with appropriate federal and state agencies in the prosecution of criminal violations involving fraud in connection with mortgage lending.

(f) The unit shall cooperate with the following to implement this chapter:

(1) The Indiana professional licensing agency and the appropriate licensing boards with respect to persons licensed under IC 25.

(2) The department of financial institutions.

(3) The department of insurance with respect to the sale of insurance in connection with mortgage lending.

(4) The securities division of the office of the secretary of state.

(5) The supreme court disciplinary commission with respect

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to attorney misconduct.

Sec. 25. The attorney general may file complaints with any of the agencies listed in section 24(f) of this chapter to implement this chapter.

Sec. 26. The establishment of the unit and its powers do not limit the jurisdiction of any agency described in section 24(f) of this chapter.

Sec. 27. (a) The attorney general and an investigator of the unit may do any of the following when investigating alleged fraud in connection with mortgage lending:

- (1) Issue and serve a subpoena for the production of records, including records stored in electronic data processing systems, for inspection by the attorney general or the investigator.
- (2) Issue and serve a subpoena for the appearance of any person before the department to provide testimony under oath.
- (3) Apply to a court with jurisdiction to enforce a subpoena described in subdivision (1) or (2).

(b) The attorney general shall make recommendations to the general assembly for appropriate legislation to address fraud in connection with mortgage lending.

(c) The unit shall maintain an education program to inform consumers of mortgage loans of fraud in connection with mortgage lending. The unit shall cooperate with the agencies listed in section 24(f) of this chapter to develop and implement the education program required by this subsection.

Sec. 28. (a) The fees assessed by the county recorder to record a mortgage is increased by three dollars (\$3) per mortgage filing. The county recorder shall retain fifty cents (\$0.50) of the fee increase. One dollar and fifty cents (\$1.50) shall be credited to the Indiana housing finance authority established under IC 5-20-1-3 to identify, promote, and fund mortgage literacy training and programs throughout the state. One dollar (\$1) from the fee increase is credited to the mortgage fraud unit.

(b) An allocation of seventy-five thousand dollars (\$75,000) consisting of the increased fees under this chapter shall be made to the legislative council before any fee revenue shall be allocated to the mortgage fraud unit of the attorney general's office or the Indiana housing finance authority. The seventy-five thousand dollar (\$75,000) allocation shall be used to contract an independent organization to conduct a study of predatory lending and the causes of the high rate of foreclosure in Indiana during 2001 and

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(c) The results of the study shall be reported in writing to the legislative council not later than December 31, 2004. The report is a public record. This subsection expires January 1, 2005.

(d) The legislative council may establish an interim study committee to investigate predatory lending and the high rate of foreclosure in Indiana.

Sec. 29. The fee assessed under IC 23-2-5 by the for the registration of loan brokers and originators is increased by one hundred dollars (\$100) for renewal of a registration and by one hundred dollars (\$100) for an initial registration and is credited to the loan broker regulation account established by IC 23-2-5-7.

Sec. 30. A servicer of a covered loan shall report at least monthly both the favorable and unfavorable payment history information of the borrower on payments due to the lender on a covered loan to a nationally recognized consumer credit reporting agency. This subsection does not prevent a servicer from agreeing with the borrower not to report specified payment history information in the event of a resolved or unresolved dispute with an borrower and does not apply to covered loans held or serviced by a lender for less than ninety (90) days."

Page 4, after line 16, begin a new paragraph and insert:

"SECTION 5. [EFFECTIVE UPON PASSAGE] This act does not affect:

- (1) rights or liabilities accrued;
- (2) penalties incurred;
- (3) crimes committed; or
- (4) proceedings begun;

before the effective date of this act. Those rights, liabilities, penalties, crimes, and proceedings continue and shall be imposed and enforced under prior law as if this act had not been enacted.

SECTION 6. [EFFECTIVE UPON PASSAGE] The provisions of this act are severable in the manner provided by IC 1-1-1-8(b).

SECTION 7. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1698 as introduced.)

BARDON, Chair

Committee Vote: yeas 10, nays 2.

HB 1655—LS 7174/DI 108+



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